

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #6	CCRB Case #: 201806711	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/09/2018 5:00 PM, Thursday, 08/09/2018 10:30 PM	Location of Incident: 40th Street and 3rd Avenue	Precinct: 72	18 Mo. SOL 2/9/2020	EO SOL 2/9/2020	
Date/Time CV Reported Sun, 08/12/2018 10:32 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 08/12/2018 10:32 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Salvatore Vieni	03011	945338	GVSD Z1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jorge Santacruz	4396	947458	066 PCT
2. POM Richard Fuentes	11714	938509	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Salvatore Vieni	Abuse: At the intersection of § 87(2)(b) in Brooklyn, Sergeant Salvatore Vieni seized § 87(2)(b)'s property.	
B.SGT Salvatore Vieni	Discourtesy: At the intersection of § 87(2)(b) in Brooklyn, Sergeant Salvatore Vieni spoke discourteously to § 87(2)(b)	
C.SGT Salvatore Vieni	Force: At the intersection of § 87(2)(b) in Brooklyn, Sergeant Salvatore Vieni used physical force against § 87(2)(b)	
D.SGT Salvatore Vieni	Force: At the intersection of § 87(2)(b) in Brooklyn, Sergeant Salvatore Vieni used physical force against § 87(2)(b)	
E.SGT Salvatore Vieni	Off. Language: At the 72nd Precinct Stationhouse, Sergeant Salvatore Vieni made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	

### Case Summary

On August 12, 2018, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On August 9, 2018, at 5:00 p.m., § 87(2)(b) washed his car under the overpass of the BQE near the intersection of 40<sup>th</sup> Street and 3<sup>rd</sup> Avenue in Brooklyn when Sgt. Salvatore Vieni, PO Santacruz, and PO Fuentes of the 72<sup>nd</sup> Precinct arrived at the location. Sgt. Salvatore Vieni of the 72<sup>nd</sup> Precinct seized § 87(2)(b)'s vehicle for being unregistered (**Allegation A – Abuse of Authority:** § 87(2)(g) § 87(2)(b) approached the tow truck operator and Sgt. Vieni told § 87(2)(b) to “back the fuck up” (**Allegation B – Discourtesy:** § 87(2)(g) § 87(2)(b) Sgt. Vieni placed § 87(2)(b) under arrest and Sgt. Vieni took § 87(2)(b) to the ground (**Allegations C – Force:** § 87(2)(g) § 87(2)(b) While § 87(2)(b) was on the ground, Sgt. Vieni stepped on § 87(2)(b)'s testicles (**Allegation D – Force:** § 87(2)(g) § 87(2)(b) § 87(2)(b) was handcuffed and transported to the 72<sup>nd</sup> Precinct stationhouse where he requested medical attention. As EMTs removed § 87(2)(b) to the hospital, Sgt. Vieni told § 87(2)(b) “Stop being a bitch and grow a new pair” (**Allegation E – Offensive language:** § 87(2)(g) § 87(2)(b)).

§ 87(2)(b) was arrested and charged with obstruction of governmental administration and resisting arrest. § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

§ 87(2)(b)

§ 87(2)(b)

BWC footage was obtained from Sgt. Vieni's BWC (**Board Review 02**). PO Fuentes and PO Santacruz were not assigned BWC during this incident.

### Findings and Recommendations

#### **Allegation A – Abuse of Authority: At the intersection of 40th Street and 3rd Avenue in Brooklyn, Sergeant Salvatore Vieni seized § 87(2)(b)'s property.**

It is undisputed that § 87(2)(b)'s 1997 GMC Sierra pickup truck had a license plate that did not belong to the vehicle.

§ 87(2)(b) testified that August 9, 2018, he washed his 2017 Honda Accord utilizing a fire hydrant under the BQE when Sgt. Vieni and PO Fuentes approached him. Sgt. Vieni ordered § 87(2)(b) to shut off the fire hydrant and to dispose of beer bottles that were on the ground. § 87(2)(b) told Sgt. Vieni that the beer bottles did not belong to him and shut off the fire hydrant as directed. Approximately five minutes later, Sgt. Vieni, PO Santacruz, PO Fuentes returned along with a tow truck. Sgt. Vieni told § 87(2)(b) that he was towing his 1997 GMC Sierra pickup truck for not being registered. § 87(2)(b)'s pickup truck was towed (**Board Review 03**).

This portion of the incident was not captured by Sgt. Vieni's BWC footage.

Sgt. Vieni, PO Santacruz, and PO Fuentes were consistent that on August 9, 2020, they conducted a Rotation Towing (Rotow) operation, which addressed a condition of unregistered and abandoned vehicles parked under the overpass of the BQE. Upon arriving at the location Sgt. Vieni noticed § 87(2)(b) who washed a sedan utilizing water from a fire hydrant and drank beer. Sgt. Vieni approached § 87(2)(b) ordered him to shut off the fire hydrant and to dispose

of the beer. § 87(2)(b) complied. Sgt. Vieni then decided to use his discretion and not issue § 87(2)(b) summonses, and left § 87(2)(b) to begin the Rotow Operation. Sgt. Vieni ran the license plate of a GMC Sierra pickup truck and found that the license plate was registered to a different vehicle. Sgt. Vieni ordered the vehicle to be towed for not having a valid license plate. § 87(2)(b) approached Sgt. Vieni and said that the truck belonged to him, which Sgt. Vieni was not aware of previously (**Board Review 04, 05, 06**).

PO Fuentes prepared a property voucher for § 87(2)(b)'s pickup truck. The property voucher noted that the vehicle was unregistered (**Board Review 15**).

Vehicles with improper or expired registration are to be removed via Rotow NYPD Patrol Guide Procedure 214-30. (**Board Review 07**).

§ 87(2)(g)

**Allegation B – Discourtesy: At the intersection of 40th Street and 3rd Avenue in Brooklyn, Sergeant Salvatore Vieni spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that he approached the tow truck driver and asked why he was towing his truck. The tow truck driver said he was called to tow the vehicle and asked where § 87(2)(b) wanted it dropped off. Sgt. Vieni, PO Fuentes, and PO Santacruz, approached § 87(2)(b) and Sgt. Vieni told § 87(2)(b) to, “Back the fuck up.”

This portion of the incident was not captured by Sgt. Vieni’s BWC footage.

Sgt. Vieni testified that he ordered § 87(2)(b) to back away from the truck but denied that he told § 87(2)(b) to “back the fuck up.” Neither PO Santacruz nor PO Fuentes recalled if Sgt. Vieni told § 87(2)(b) to “back the fuck up.”

§ 87(2)(g)

**Allegation C – Force: At the intersection of 40th Street and 3rd Avenue in Brooklyn, Sergeant Salvatore Vieni used physical force against § 87(2)(b)**

Sgt. Vieni’s BWC footage, starting at the 00:32 mark of the video player visible at the bottom of the screen, showed § 87(2)(b) argue with the officers about the validity of the vehicle being towed. § 87(2)(b) stood on the sidewalk away from his truck and the officers stood between § 87(2)(b) and his truck, which is the white truck seen in the background. Sgt. Vieni told § 87(2)(b) that his truck was being towed because it has an invalid registration. § 87(2)(b) asked to have his own tow truck company tow the vehicle and accused Sgt. Vieni of stealing his truck. At 02:10, Sgt. Vieni approached PO Santacruz and said that they were going to arrest him. § 87(2)(b)'s truck was no longer on scene. Sgt. Vieni moved behind § 87(2)(b) and said that

they were going to settle this a different way. Sgt. Vieni grabbed § 87(2)(b)'s wrist and elbow and § 87(2)(b) held his wrist in front of him. § 87(2)(b) moved forward and Sgt. Vieni's BWC fell to the ground. Sgt. Vieni picked up his BWC shortly thereafter. § 87(2)(b) was on the ground handcuffed (**Board Review 09**).

§ 87(2)(b) testified that after Sgt. Vieni ordered him to "back the fuck up," § 87(2)(b) stepped back approximately 20 feet from the truck. § 87(2)(b) had not interfered with the tow truck driver nor did he attempt to prevent his truck from being towed. § 87(2)(b) pleaded with Sgt. Vieni not to take the truck. Sgt. Vieni told § 87(2)(b) that the officers had received complaints about the truck being abandoned. § 87(2)(b) said he had just purchased the truck and did not have the title to register it. Sgt. Vieni told § 87(2)(b) that if he did not walk away, he was going to arrest him for impeding with a police investigation. § 87(2)(b) told Sgt. Vieni that he was a scumbag and began recording the officers while walking away. § 87(2)(b)'s phone, which contained the recording, broke following the incident and he did not have access to the recorded video. As § 87(2)(b) walked away, Sgt. Vieni attempted to trip § 87(2)(b) by grabbing § 87(2)(b)'s right shoulder and sweeping his right leg. However, § 87(2)(b) was able to remain standing. Sgt. Vieni had not told § 87(2)(b) that he was under arrest or issued him any commands prior to this. § 87(2)(b) raised his hands above his head and asked Sgt. Vieni what he was doing. Sgt. Vieni told § 87(2)(b) that he was under arrest and ordered him to place his hands behind his back. § 87(2)(b) complied. Sgt. Vieni, PO Santacruz, and PO Santacruz approached § 87(2)(b). Sgt. Vieni tripped § 87(2)(b) in the same manner as the first try, this time successfully. After § 87(2)(b) was on the ground an officer placed him in handcuffs. While § 87(2)(b) was on the ground, he saw that the tow truck containing his truck had left and was two or four blocks away from the location. § 87(2)(b) saw witnesses across the street but denied knowing any of the witnesses.

§ 87(2)(b) a witness identified by the investigation during fieldwork conducted at the incident location, provided testimony consistent with § 87(2)(b)'s testimony. § 87(2)(b) testified that he was across the street in front of Yesse's Deli, located at 4002 3<sup>rd</sup> Avenue in Brooklyn, when he heard a man he knew only as § 87(2)(b) (identified via investigation as § 87(2)(b)) state, "Oh shit, my truck" and saw officers towing § 87(2)(b)'s truck. The tow truck drove § 87(2)(b)'s truck away. § 87(2)(b) did not argue with or attempt to prevent the tow truck driver from leaving with his truck. § 87(2)(b) spoke with Sgt. Vieni, PO Santacruz, and PO Fuentes for approximately four or five minutes; however, § 87(2)(b) could not hear the conversation. Sgt. Vieni approached § 87(2)(b) from behind and grabbed him. § 87(2)(b) did not hear the officers issue any commands to § 87(2)(b) nor did he hear any yelling or arguing before Sgt. Vieni grabbed § 87(2)(b). PO Santacruz and PO Fuentes also grabbed § 87(2)(b) and the officers threw him onto the ground. § 87(2)(b) could not describe how § 87(2)(b) was thrown to the ground. § 87(2)(b) asked the officers, "What's going on?" but did not resist being brought to the ground. The officers then handcuffed § 87(2)(b) (**Board Review 08**).

Sgt. Vieni testified that prior to him activating his BWC, he told § 87(2)(b) twice that the truck was not registered, and he could not drive it away. § 87(2)(b) asked each time if Sgt. Vieni would let him drive it away. § 87(2)(b) attempted to interfere with the removal of his vehicle by following the tow truck operator and attempting to walk in front of the tow truck operator,

preventing him from placing chains on § 87(2)(b)'s vehicle. Sgt. Vieni did not recall the exact words that § 87(2)(b) used, but recalled that he argued with the tow truck operator over the tow of his vehicle. Sgt. Vieni told § 87(2)(b) approximately two or three times that he needed to move from the location and that he was interfering with the tow operation. § 87(2)(b) refused to move, argued with Sgt. Vieni about the validity of the tow, and continued to interfere with the tow truck by walking close to him. Sgt. Vieni activated his BWC and decided to place § 87(2)(b) under arrest for OGA for interference with the tow truck, which was still on scene. Sgt. Vieni told PO Santacruz and PO Fuentes that § 87(2)(b) was under arrest. Sgt. Vieni grabbed both of § 87(2)(b)'s arms while simultaneously saying, "That's it, we're going to bring you in." Sgt. Vieni did not attempt to trip § 87(2)(b). Sgt. Vieni did not recall if he gave § 87(2)(b) commands prior to grabbing him, or if he gave § 87(2)(b) a chance to voluntarily comply with the arrest prior to grabbing him. § 87(2)(b) tensed up, wiggled his body and attempted to break free, and asked Sgt. Vieni why he was grabbing him. § 87(2)(b) pulled his arms away and pushed Sgt. Vieni in his upper chest. Sgt. Vieni grabbed § 87(2)(b)'s upper body and guiding him to the ground by offsetting § 87(2)(b)'s balance. This was a controlled maneuver and Sgt. Vieni did not slam § 87(2)(b) to the ground. § 87(2)(b) landed on the ground on his back. Sgt. Vieni did not recall tripping § 87(2)(b). Either PO Santacruz or PO Fuentes assisted. Sgt. Vieni decided to take § 87(2)(b) to the ground to make it easier to place him in handcuffs because § 87(2)(b) pulled his arms away. After § 87(2)(b) was on the ground, he became compliant and did not resist the officers. Sgt. Vieni grabbed § 87(2)(b)'s arms, pulled them behind § 87(2)(b)'s back, and placed him in handcuffs.

After Sgt. Vieni reviewed his BWC footage, he recalled that he said to § 87(2)(b) "We're going to handle this a different way" as he grabbed § 87(2)(b) which he believed would adequately notify § 87(2)(b) that he was being placed under arrest. The video refreshed Sgt. Vieni's recollection about not giving § 87(2)(b) a chance to voluntarily comply with the arrest prior to using force on him. Sgt. Vieni did not give § 87(2)(b) an opportunity to voluntarily comply as he wanted to use the element of surprise to avoid any potential resistance as § 87(2)(b) was already angry and agitated.

PO Santacruz and PO Fuentes were consistent in their statements that after Sgt. Vieni grabbed § 87(2)(b)'s wrists, § 87(2)(b) stiffened his arms, at which point they assisted Sgt. Vieni in placing § 87(2)(b) in handcuffs. PO Santacruz testified that § 87(2)(b) tensed his arms and pushed the officers away, at which point the officers took § 87(2)(b) to the ground. PO Fuentes testified that § 87(2)(b) only tensed his arms. PO Fuentes did not recall Sgt. Vieni taking § 87(2)(b) to the ground.

Though § 87(2)(b) stated all officers used force, § 87(2)(b) confirmed that it was only Sgt. Vieni that took him to the ground and Sgt. Vieni testified that he made the decision to take § 87(2)(b) to the ground. Therefore, the force allegation was just pleaded to Sgt. Vieni.

Officers should inform prisoners of authority and cause of arrest, unless physical resistance, flight, or other factors render such procedure impractical (**Board Review 10**). **NYPD Patrol Guide, Procedure 208-02**

When appropriate and consistent with personal safety, members of service (MOS) will use de-escalation techniques to safely gain voluntary compliance. MOS are to use the minimum force necessary to effect an arrest. In determining whether the use of force is reasonable, MOS should consider the nature and severity of the crime, actions taken by the subject, duration of the action, immediacy of the perceived threat, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, size, age, and condition of the subject in comparison to the MOS, subject's violent history if known, presence of hostile crowd or agitators, and if the subject is under the influence of any substances (**Board Review 11**). **NYPD Patrol Guide, Procedure 221-01**

The BWC showed that Sgt. Vieni did not inform § 87(2)(b) that he was under arrest prior to grabbing him. The statement that he did make, "We're going to handle this a different way," is not a sufficient statement to notify an individual that they are under arrest, nor did it afford § 87(2)(b) the ability to voluntarily comply with the arrest prior to Sgt. Vieni's use of force. The officers arrested § 87(2)(b) for obstruction of governmental administration, a nonviolent offence. Furthermore, § 87(2)(b) was arrested for interfering with the tow truck, and despite Sgt. Vieni's testimony, his BWC shows that the point in which Sgt. Vieni took § 87(2)(b) to the ground, § 87(2)(b)'s truck had been successfully removed and was no longer on scene. Prior to Sgt. Vieni grabbing § 87(2)(b) and taking him to the ground § 87(2)(b) did not resist arrest or attempt to flee the location. There were three officers present on the scene, which outnumbered § 87(2)(b). Finally, the arrest was made absent the presence of a hostile crowd and the officers did not have a knowledge of § 87(2)(b) prior to this incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Force: At the intersection of 40th Street and 3rd Avenue in Brooklyn, Sergeant Salvatore Vieni used physical force against § 87(2)(b)**

§ 87(2)(b) testified that as he laid on the ground in handcuffs, one of the officers, who he did not see, stepped on § 87(2)(b)'s testicles causing a hernia. § 87(2)(b) screamed in pain. Sgt. Vieni told § 87(2)(b) to grow a new set. Sgt. Vieni's statement led § 87(2)(b) to conclude that Sgt. Vieni was the officer who stepped on his testicles.

The investigation was unable to obtain a signed subpoena from § 87(2)(b) and subsequently § 87(2)(b)'s medical records were unavailable to the investigation.

§ 87(2)(b) did not testify to seeing an officer stepping on § 87(2)(b)'s testicles.

Sgt. Vieni and PO Fuentes denied stepping on § 87(2)(b)'s testicles and all said that they did not see any officer do so. PO Santacruz did not recall himself or any other officer stepping on § 87(2)(b)'s testicles.

Sgt. Vieni's BWC footage did not show any officer step on § 87(2)(b)'s testicles, however, Sgt. Vieni's BWC fell to the ground as the officers took § 87(2)(b) to the ground. At the moment in which Sgt. Vieni picked up his BWC, Sgt. Vieni was standing. The BWC showed, at the 02:59 mark of the video player visible at the bottom of the screen, that § 87(2)(b) lied on the ground and was calm and did not scream in pain as alleged.

§ 87(2)(g)

**Allegation E – Offensive Language: At the 72nd Precinct Stationhouse, Sergeant Salvatore Vieni made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

§ 87(2)(b) testified that at the 72<sup>nd</sup> Precinct stationhouse, he requested to go to the hospital. An officer called for an ambulance and unidentified EMTs arrived at the stationhouse. The EMTs took § 87(2)(b) out of the cell and walked him past the front desk. Sgt. Vieni, who was behind the front desk, told § 87(2)(b) to “stop being a bitch and to grow a new pair.”

The investigation was unable to obtain a signed subpoena from § 87(2)(b) and subsequently the EMTs were not identified.

This portion of the incident was not captured on video.

Sgt. Vieni testified that he was behind the front desk when § 87(2)(b) was removed to the hospital but denied making the statement and denied making any comments to § 87(2)(b). Both PO Santacruz and PO Fuentes denied hearing Sgt. Vieni make the statement.

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) § 87(2)(b)
  - § 87(2)(b)
  - § 87(2)(b)
- Sgt. Vieni has been a member-of-service for 13 years and has been a subject in two additional CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- This is the first CCRB complaint to which PO Santacruz has been a party.

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## Mediation, Civil and Criminal Histories

- a Notice of Claim for § 87(2)(b)

upon receipt. (**Board Review 13**)

**§ 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)**

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Squad No.: 06

Investigator: Inv. Thomas Juliano

Signature

Inv. Thomas Juliano

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Print Title & Name

09/18/2020

Date \_\_\_\_\_

Squad Leader: IM Jessica Pena

IM Jessica Pena

10/9/2020

Signature

Print Title &amp; Name

Date \_\_\_\_\_